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August 29, 1994

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AUG 29 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

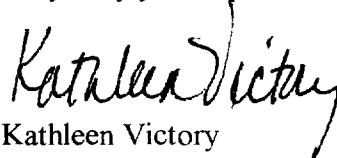
Re: FM Table of Allotments -- Billings, Montana  
RM-8486 - MM Docket No. 94-68

Dear Mr. Caton:

Enclosed herewith on behalf of PBMI Limited Partnership, licensee of Stations KGHL(AM) and KIDX(FM), Billings, Montana, are an original and four copies of its Comments in Opposition to Notice of Proposed Rule Making in the above-referenced proceeding.

Should there be any questions regarding this matter, kindly communicate directly with this office.

Very truly yours,



Kathleen Victory  
Counsel for  
PBMI Limited Partnership

Enclosure

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AUG 29 1994

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	RM-8486
Table of Allotments,	)	MM Docket No. 94-68
FM Broadcast Stations,	)	
(Billings, Montana)	)	

**COMMENTS IN OPPOSITION TO NOTICE OF PROPOSED RULE MAKING**

PBMI Limited Partnership ("PBMI"), licensee of KGHL(AM) and KIDX(FM), Billings, Montana, by its counsel, hereby submits the following comments in response to the Commission's Notice of Proposed Rule Making in the above-captioned proceeding, released July 6, 1994 ("NPRM"), proposing the allocation of Channel 286A to Billings, Montana.<sup>1</sup>

1. No justification whatsoever for the allocation of yet another FM frequency to Billings, Montana, was provided by either the Petitioner, Bruce L. Erickson, or the NPRM. In fact, the only statement provided for the allocation is that it can be made in compliance with the Commission's spacing requirements. This alone, however, does not establish a sufficient reason for the allocation. The Commission has seen the disastrous results of its Docket 80-90 in which dozens of frequencies were "dropped in" based upon nothing more than the minimum separation requirements. While many of the authorized 80-90 facilities have never been constructed or licensed, those that

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<sup>1</sup> The NPRM specified Saturday, August 27, 1994 as the date for filing comments. Today, Monday, August 29, 1994, is the first business day following the date on which the comments were due.

were often resulted in disastrous market conditions forcing the station to fail and go dark. Many others are currently being operated pursuant to local management or time brokerage agreements because they lack the viability to survive as stand alone facilities. Billings is just such a place. In a market with so many existing facilities (see discussion below), there is no reason to believe that the same plight would not await yet another station. Absent some overriding justification, the Commission should not allocate yet another channel to Billings, Montana.

2. The NPRM states that the proposed allocation would be the seventh (commercial) FM broadcast service authorized to Billings, Montana. While this is true, it fails to recognize that there are currently six operating commercial (and one non-commercial) FM stations licensed to Billings, plus Stations KBWJ(FM), Hardin, and KTWM(FM), Laurel, Montana, which provide service to Billings. Thus, there are a total of eight commercial FM stations serving Billings. Moreover, there are five licensed and operating AM stations and three television stations in Billings as well as an AM in Laurel and AM and a TV licensed to Hardin. With at least 20 operating stations currently serving Billings -- not including the local CATV system which is reported to have approximately 24,857 subscribers,<sup>2</sup> it cannot be said that the public interest will be served by the proposed allocation. Billings, with a population of only 80,800,<sup>3</sup> simply cannot sustain yet another stand alone FM station. Stating the obvious, the

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<sup>2</sup> Hardin and Laurel, Montana similarly are served by CATV systems with 979 and 1447 subscribers respectively.

<sup>3</sup> Figure based upon 1990 U.S. Census.

Billings market is already overcrowded. The only way another station could survive in Billings would be to operate through a TBA or a local marketing agreement with another station in the market. That being the case, it would undoubtedly be Harris Broadcasting Company, the proposed purchaser of American Bank's station in Hardin, Montana<sup>4</sup>, that would try to become the time broker of this facility since the Hardin FM station currently does not place a competitive signal over Billings. Rather, it relies upon FM translator K236AB in order to provide service to Billings.

3. In addition, a substantial question exists as to the *bona fides* of the Petitioner. Bruce Erickson is the President of American Bank, the current licensee of Station KBMJ(FM), Hardin, Montana. American Bank became the licensee of KBMJ as the result of an involuntary transfer of control of the license after the then licensee defaulted on its obligation to American Bank. American Bank never directly operated the station. Instead, the station was operated by an affiliate of PBMI, Pegasus Broadcasting of Billings, Inc., pursuant to a time brokerage agreement ("TBA"). That TBA was terminated on November 27, 1993 and only four days later American Bank entered into an agreement to sell the station to Harris Broadcasting Company.<sup>5</sup> The station has been operated since that time by Harris Broadcasting, the proposed

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<sup>4</sup> See paragraph 3 below.

<sup>5</sup> An application to assign the license of KBMJ(FM) (formerly KDWG) from American Bank to Harris Broadcasting Company, Inc. is currently pending (File No. BAHL-931209GH). The call sign was changed after American Bank terminated its TBA with Pegasus.

assignee, pursuant to a TBA. While licensed to Hardin, KBMJ's main studio is located in downtown Billings, Montana.

4. There is no evidence to even remotely suggest that Erickson, in his individual capacity, has any interest, much less experience, in operating a broadcast station.<sup>6</sup> Of interest is the fact that Channel 264C, Livingston, Montana, the city in which Erickson resides,<sup>7</sup> became available for application, yet Erickson did not apply for it.<sup>8</sup> Given these facts, a substantial question exists as to whether the Petitioner has any genuine interest in operating the station himself or whether he seeks the allocation of an additional Billings channel for the purpose of obtaining another station which can be sold to or operated by Harris Broadcasting pursuant to a TBA.

5. However, in the event that the Commission decides to allocate the additional FM frequency to Billings, Montana, PBMI will apply for the channel when it is allotted and, if its application is granted, will construct and operate the station.

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<sup>6</sup> Erickson's Petition states only that if allotted and his subsequent applications is granted, he will construct a station on the new channel. No mention is made of operating the station. See Petition for Rule Making at p. 2.

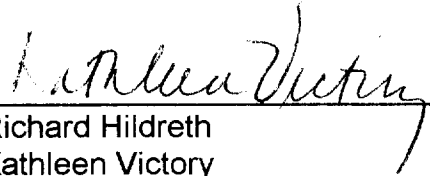
<sup>7</sup> Livingston is located approximately 120 miles west of Billings and is in the Bozeman, Montana market.

<sup>8</sup> One must ask why, if Erickson had any interest in operating an FM station he would find a Class A facility in Billings more attractive than a Class C facility in the town of his residence.

WHEREFORE, in light of the foregoing, PBMI Limited Partnership respectfully submits that the proposed allocation of Channel 286A to Billings, Montana, be denied.

Respectfully submitted,

**PBMI LIMITED PARTNERSHIP**

A handwritten signature in cursive script, appearing to read "Kathleen Victory", is written over a horizontal line.

Richard Hildreth  
Kathleen Victory  
Its Attorneys

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Rosslyn, VA 22209  
(703) 812-0400

August 29, 1994

### CERTIFICATE OF SERVICE

I, Diane Roper, a secretary in the law offices of Fletcher, Heald & Hildreth, hereby certify that I have on this 29th day of August, 1993, had copies of the foregoing "COMMENTS IN OPPOSITION TO NOTICE OF PROPOSED RULE MAKING" mailed by U.S. Mail first class, postage prepaid, to the following:

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Mass Media Bureau  
Federal Communications Commission  
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